

16-90075-jm  
August 15, 2016  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 16-90075-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On July 12, 2016, the Complainant filed a complaint with the Clerk's Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the "Act"), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, 249 F.R.D. 662 (U.S. Jud. Conf. 2008) (the "Rules"), charging a district judge of this Circuit (the "Judge") with misconduct.

**BACKGROUND**

The Judge presided over the Complainant's criminal trial for conspiracy to bomb a public transportation system. The Judge granted the government's motion for an anonymous jury. The Complainant was convicted by a jury, and the Judge sentenced him to life imprisonment. The court of appeals affirmed the

conviction, finding no error in the empaneling of an anonymous jury, and explaining that the Judge “carefully employed mechanisms designed to ensure a fair jury, including an extensive juror questionnaire, a hearing to permit the government and the defendants to strike jurors for cause, two weeks of additional questioning, and a full opportunity to exercise peremptory challenges.”

The misconduct complaint alleges generally that the Judge violated the Complainant’s constitutional right “to a fair and impartial judge and jury” and predetermined the Complainant’s guilt. The complaint specifies that the Judge erred in allowing an anonymous jury, intervened in jury selection, and deprived the Complainant of his right to select a jury.

## **DISCUSSION**

The complaint is dismissed.

An allegation that a judge, in reaching a decision, neglected to consider fully all arguments presented, failed to comprehend the meaning or import of certain statutes or cases, or disregarded certain key facts or evidence is merely challenging the correctness of the judge’s decision. In other words, what such allegations contend is that the judge got it wrong, not that the judge engaged in judicial misconduct.

The allegations in the complaint fall largely into this category. They seek to challenge the correctness of the Judge's rulings and official actions concerning the empaneling of an anonymous jury. Accordingly, these allegations are dismissed as "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related."); 11(c)(1)(B). Purely merits-related allegations are excluded from the Act to "preserve[] the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling." Rule 3 cmt. Such challenges can be pursued, to the extent the law allows, only through normal appellate procedures.

The allegation of partiality, which includes an allegation that the Judge predetermined the Complainant's guilt, appears entirely derivative of the merits-related charges; but to the extent it is separate, it is wholly unsupported, and is therefore dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D).

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.